

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF FLORIDA
GAINESVILLE DIVISION

JOSEPH ALBERT GANDOLFF,

Plaintiff,

v.

CASE NO. 1:08-cv-00248-MP-AK

BY THE PLANET INC, ANTHONY MICHAEL MCKNIGHT,

Defendants.

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ORDER

This matter is before the Court on Doc. 11, Report and Recommendation regarding the Second Amended Complaint, Doc. 9, filed by Joseph Albert Gandolff. The Magistrate has recommended the Complaint be dismissed for lack of subject matter jurisdiction, or in the alternative, consolidated with Case No. 1:06-cv-00108. Plaintiff timely objected, Doc. 12, so this Court reviews all analysis to which there has been an objection *de novo*.

A court may raise a jurisdictional defect *sua sponte* at any time. New England Co. v. Bank of Gwinnett County, 891 F. Supp. 1569, 1577 (N.D. Ga. 1995), *citing* Barnett v. Bailey, 956 F.2d 1036, 1039 (11th Cir. 1992); Fitzgerald v. Seaboard System R.R., Inc., 760 F.2d 1249, 1251 (11th Cir. 1985). According to the Uniform Fraudulent Transfer Act, jurisdiction of proceedings under that statute must be in the circuit court for the county where the principal place of business resides and other requirements of bond and notice apply. See Florida Statutes §727.102 and 104.

Plaintiff has not alleged any constitutional violation such that original jurisdiction could be obtained under the court's federal question jurisdiction nor does he have diversity with the

defendants. Without original jurisdiction, supplemental jurisdiction over the state law claims does not attach. 28 U.S.C. §§ 1331, 1332, 1367.

Plaintiff argues in his Objection that ancillary jurisdiction (a form of supplemental jurisdiction) should apply to keep this claim active. Ancillary jurisdiction applies when the parties are in federal court because of diversity, and one party wants to bring a claim against another (third) party which would otherwise defeat that diversity. This claim concerns the exact same parties as Case No. 1:06-cv-0018, so ancillary jurisdiction cannot apply. 28 U.S.C.A. § 1367. Accordingly, it is hereby

ORDERED AND ADJUDGED:

1. The Report and Recommendation of the Magistrate Judge, Doc. 11, is ADOPTED and incorporated herein.
2. This case is DISMISSED for lack of subject matter jurisdiction.

DONE AND ORDERED this 1st day of October, 2009

s/Maurice M. Paul
Maurice M. Paul, Senior District Judge